

DOCKET FILE COPY ORIGINAL
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,) MM Docket No. 04-20
FM Broadcast Stations) RM-10842
(Cambridge and St. Michaels, Maryland))

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To: The Secretary

DEC 27 2004

Federal Communications Commission
Office of Secretary

REPLY COMMENTS

Bay Broadcasting, Inc. ("Bay"), by its attorneys and pursuant to the *Public Notice*, Report No. 2685, released December 9, 2004, hereby submits these Reply Comments in the above-referenced proceeding in which CWA Broadcasting, Inc., the licensee of Station WINX-FM, has sought to modify the Station's community of license from St. Michaels, Maryland to its original community of license, Cambridge, Maryland, and upgrade its operation to Class B-1 on Channel 232 ("Cambridge Proposal"). The *Public Notice* announced that Counterproposals have been submitted by MTS Broadcasting, L.C. ("MTS") and Route 12 Community Broadcasters ("Route 12"), and Dana J. Puopolo ("Puopolo"). Bay is hereby responding to the Cambridge Proposal and the various Counterproposals to it.

Bay is the licensee of Station WBEY(FM), Crisfield, Maryland. It is also the programmer, under time brokerage agreements, of two stations licensed to Pocomoke City, Maryland¹. Crisfield and Pocomoke City are both located in the lower part of Maryland's

¹ These Stations are WGOP(AM) and WKHW(FM).

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portion of the Delmarva Peninsula. This portion of the Delmarva Peninsula is rural in nature, with the principal industries being agriculture, fishing, and tourism. The communities located in this area are small and sparsely populated. The principal of Bay resides in the same area that his stations serve and is probably the person most familiar with the local population and businesses together with their needs and interests that is participating in the proceeding.

The locations known as Newark and Stockton both lie in the same county, Worcester, as Pocomoke City. Chincoteague is situated just across the Maryland-Virginia border. All are in close proximity to Pocomoke City and are familiar to Bay and its principal.

Having considered the Counterproposals, as well as the economics of operating a radio station in the rural parts of the Delmarva Peninsula, Bay wishes to provide its strong support for the Cambridge Proposal in this proceeding as the correct result for the Commission to adopt. Having just been able to upgrade its FM station to Class B1 status, Bay knows the importance of maximizing service in a rural area. Bay recognizes that a single station owner, such as CWA, has a difficult time operating in a rural area and only by extending its reach can it secure listeners and advertising.²

Bay is surprised and cannot believe that anyone with any knowledge of broadcasting and broadcast economics would even consider any of these locations as the site for a commercial enterprise let alone a broadcast station, which is dependent, in the Delmarva, on retail enterprises for advertising. These two locations can best be described as rural crossroads. In Newark, the only viable commercial entity is a combination gas station/convenience store. Other than that,

² Bay also wishes to note that CWA is 100% African-American owned, which is extremely rare in general and especially in the Delmarva Peninsula where Bay knows of no other minority-owned stations. Bay cannot believe that the Commission is not supporting the efforts of its rare minority owner and, instead, is jeopardizing his ability to survive against the established and highly concentrated broadcast owners that are now as prevalent in the Delmarva as elsewhere in the nation.

Newark has no functioning businesses that one would normally find even in a commercial center in the Delmarva. If one were to ask a resident of Worcester County what is in Newark, they would be hard pressed to say more than that it is where a garbage dump is located and that the local vocational center is situated on Route 113, a highway that by-passes Newark.

As for Stockton it is even less populated than Newark and equally devoid of enterprise. Stockton is located nearly as far as one can go in the southeastern part of Maryland's Delmarva. The area has a limited population that is nearly all agricultural based. The nearest community of any size is Pocomoke City. Over the years, Bay has only secured limited advertising from the Stockton area as there are few enterprises that are present in the location to purchase advertising.

Chincoteague is a legitimate community if one looks for an entity that has a government and government-operated services. Of course, Chincoteague is famous as the location of the annual pony roundup immortalized in the book, "Misty of Chincoteague." For one day a year, the town is a tourist mecca. For the remainder of the year, it is a beautiful, but isolated rural community that remains well known owing to its Misty reputation. However, its geographical isolation from East Coast population centers means that its growth will always be limited.

Evidence of the lack of commercial viability can be found in the existing station licensed to the community. Station WCTG(FM) recently commenced broadcasting as a Chincoteague licensed station. The Station is a nearly music-only station. If one were to listen to it, one would be hard pressed to hear any advertising. How long this Station can survive is a real question. That two stations could serve a community of 4,300 people isolated from any other community of significant size could serve is a near certain impossibility.

Considering these factors, Bay submits that there is no public interest to be served by either of these three proposals. The two Maryland locations are not communities by any stretch

of the imagination. They are rural crossroads that are noticeable by the absence of any viable businesses or services. One does not go to Stockton or Newark to shop, dine, conduct business, visit a doctor, or take care of government business. Single commercial enterprises are all that are left in these locations as commercial centers have gravitated elsewhere. While these locations may once have been thriving, when the railroads still ran, they today have the look and feel (as a result of their emptiness and the closed storefronts) of places whose time has come and gone.

As for Chincoteague, while it has more indicia of a community, and more residents, it is an isolated barrier island in Virginia's extremely rural Eastern Shore. The community already has its own transmission service and, as a party well versed in Eastern shore radio economics, Bay cannot believe that one, let alone two, radio stations can survive there. Given that the spectrum is a limited commodity, it is better used where it can serve more people than Chincoteague.

Bay submits that the Commission should allow WINX-FM to change its community of license and upgrade its Station. This will result in many who do not have a full range of broadcast station service to receive a signal and improved service to those who do not now receive the Station. The Commission should also use the Puopolo rule making request as the basis for a new proceeding to determine where another use of Channel 233 would best serve the public. Bay, for one, believes that better service options exist and it seeks the opportunity to present them to the Commission.

WHEREFORE, it is respectfully requested that the Commission deny the Counterproposals presented by Dana J. Puopolo, MTS Broadcasting, L.C., and Route 12 Community Broadcasters and grant the Petition for Rule Making filed by CWA Broadcasting, Inc. requesting that the FM Table of Allotments be amended by upgrading Station WINX-FM

from Channel 232A to 232B1 and reallocating FM Channel 232B1 from St. Michaels to Cambridge, Maryland.

Respectfully submitted,

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December 27, 2004

CERTIFICATE OF SERVICE

I, Barry A. Friedman, do hereby certify that I have, on this 27th day of December, 2004, served a copy of the foregoing "Reply Comments" on the following parties by first-class mail, postage prepaid:

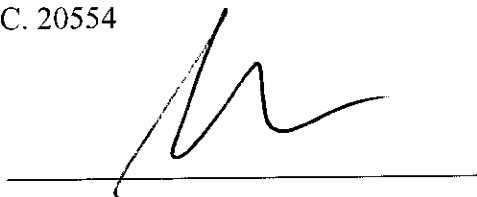
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A handwritten signature in black ink, appearing to be 'B. Friedman', is written over a horizontal line.

* By Hand